



State of Alaska Local Boundary Commission

Statement of Decision

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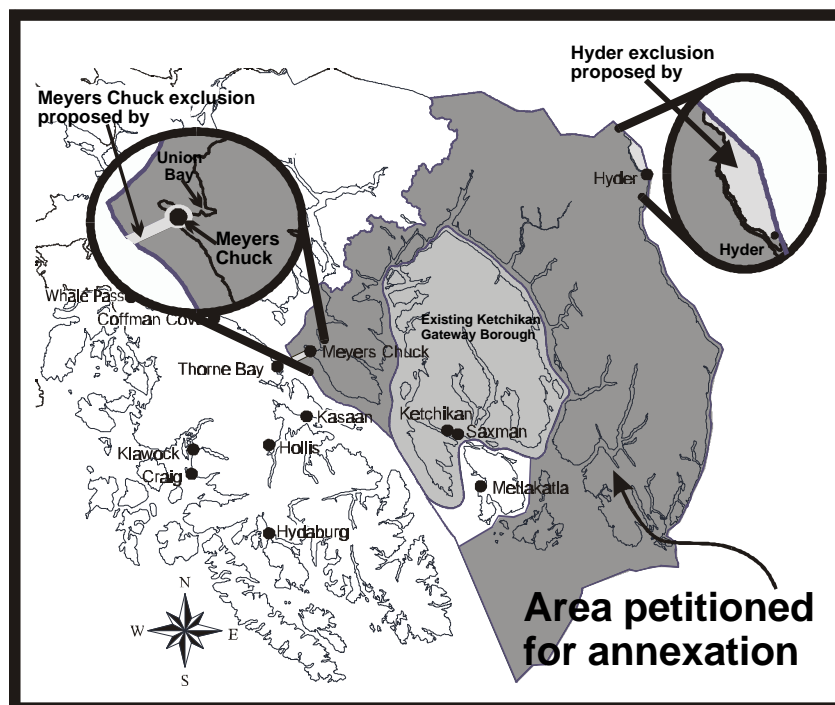
William Walters
Member
Fourth Judicial District



IN THE MATTER OF THE FEBRUARY 28, 1998 PETITION OF THE KETCHIKAN GATEWAY BOROUGH FOR ANNEXATION OF 5,524 SQUARE MILES

SECTION I BACKGROUND AND DESCRIPTION OF AREA

On February 28, 1998, the Ketchikan Gateway Borough (hereinafter “Borough”) petitioned the Commission for annexation of an estimated 5,524 square miles. The expanded corporate boundaries proposed by the Borough were nearly identical to its model boundaries as defined by the Commission in 1991. However, the proposed expanded corporate boundaries omitted Hyder consisting of 17.9 square miles and Meyers Chuck consisting of 3.5 square miles, whereas the Borough’s model boundaries included those 21.4 square miles. The map below shows the Borough’s existing corporate boundaries, the territory proposed for annexation, and the Borough’s model boundaries, including Hyder and Meyers Chuck.



The annexation proposal is large in relative terms – it would have quadrupled the size of the Borough. However, the large *relative* scale of the annexation proposal reflects the fact that the Borough is less than one-tenth the size of the average *organized* borough in Alaska.

The Borough estimated that the territory proposed for annexation was inhabited by twenty-five individuals. The Alaska Department of Community and Regional Affairs (DCRA) estimated that the population of the adjacent unincorporated settlements of Hyder and Meyers Chuck was 151 and twenty-eight, respectively.

SECTION II

SUMMARY OF PROCEEDINGS

The Borough's petition for annexation was received by DCRA on March 2, 1998. After certain errors in the petition were corrected by the Borough, the petition was accepted for filing on April 6, 1998. Public notice of the filing of the petition was given as required by law. A copy of the petition was also served on adjacent municipalities and others designated by DCRA.

The deadline for filing responsive briefs and comments in support of or in opposition to the annexation proposal was set by the Commission Chairman for May 29, 1998. No timely responsive briefs were filed, however, timely written comments were received from twenty-six individuals, groups, and organizations. On June 11, 1998, the Borough submitted a seven-page letter responding to issues raised in the written comments from the twenty-six individuals.

On October 2, 1998, DCRA released its 160-page preliminary report on the Borough's annexation proposal. Copies of DCRA's preliminary report were provided to more than eighty individuals and organizations. A two-page summary of the report was provided to an additional ninety-five individuals and organizations. Further, DCRA placed its report on the Internet where it was viewed more than 150 times during the period of public comment. Individuals and organizations were given until October 30, 1998 to comment on the preliminary report.

Timely comments on the preliminary report were received from nine individuals and organizations. In addition, the Commissioner of the Alaska Department of Education wrote to DCRA in consultation regarding the pending annexation proposal under the terms of 19 AAC 10.190(d). Further, on November 2, 1998, the Commission Chairman asked DCRA to provide certain additional information and to address a number of points in its final report.

On November 20, 1998, DCRA issued its thirty-five page final report on the Borough's annexation proposal. Copies of the report were provided to seventy-seven individuals and organizations. Additionally, a two-page summary of the final report was provided to 103 individuals. The final report was also placed on the Internet.

On November 27, 1998, DCRA provided supplemental information to the Commission as requested by the Commission Chairman on November 2.

The Commission scheduled its public hearing on the proposal to be held in the Ketchikan City Council Chambers on December 12, 1998, beginning at 3 p.m. Public notice of the hearing was given as required by law. No objections to notice or the date and place of the Commission's hearing were raised to staff or the Commission in this proceeding.

The Commission convened its public hearing as scheduled. All members of the Commission were present. Communities throughout Southeast Alaska were invited to participate by teleconference. Arrangements were made for a teleconference site at the Port Alexander City Hall; however, the individual who requested that a teleconference site be established at Port Alexander was not present at the site when the hearing began. That individual was subsequently located at home and declined to testify on the record. Comments and testimony were provided by DCRA, Borough officials, and 10 members of the public.

At the conclusion of the December 12, 1998 hearing, the Commission convened a decisional session regarding the annexation proposal. The Commission deliberated extensively in the course of the decisional session. During those deliberations, several Commissioners voice concern that

the petition failed to meet certain constitutional principles and standards established in law. These concerns related to whether the proposal:

- promotes borough boundaries that embrace an area and population with common interests to the maximum degree possible as provided by Article X, Section 3 of Alaska’s constitution and 19 AAC 10.160(a);
- would establish borough boundaries that allow communication and exchange necessary for development of integrated borough government as called for in 19 AAC 10.160(b);
- would establish borough boundaries that conform generally to natural geography and include all areas necessary for full development of municipal services on an efficient, cost-effective level as required by 19 AAC 10.190(a);
- suffers because it failed to conform to the Borough’s model boundaries even though the annexation proposal did not extend beyond the Borough’s model boundaries as addressed in 19 AAC 10.190(c);
- serves the balanced best interests of the State of Alaska, the territory proposed for annexation, and affected political subdivisions as required by 19 AAC 10.200;
- advances maximum local self-government as encouraged by Article X, Section 1 of Alaska’s constitution;
- promotes a minimum of local government units as provided by Article X, Section 1 of Alaska’s constitution.

The Commission elected not to amend the petition to add Meyers Chuck and Hyder on its own initiative at that time. The Commission was particularly concerned that additional steps might be necessary to ensure that it had adequate information to make a fully informed decision concerning those options. Such additional steps might include the opportunity for briefing by the Borough and respondents, DCRA analysis and recommendations, and public testimony directed at those options. Further, the Borough’s transition plan did not address the prospect of service delivery to Hyder or Meyers Chuck.

Rather than deny the Borough’s petition outright, the Commission voted unanimously on December 12, 1998, to allow the Borough ninety days to amend its petition. The deadline for receipt of an amended petition was set for March 12, 1999.

On March 12, 1999, Borough officials wrote to the Commission that, “the Borough wishes to proceed with the original petition submitted on March 2, 1998.”

The Commission reconvened its decisional session by teleconference on March 31, 1999. Commissioners Waring and Tesche were together in Anchorage, Commissioner Wasserman participated from Pelican, Commissioner Cannington participated from Kotzebue, and Commissioner Walters participated from Fairbanks.

SECTION III

FINDINGS AND CONCLUSIONS

The record in this proceeding includes the following:

- the Borough’s February 28, 1998 petition for annexation;
- written comments on the petition from twenty-six individuals received by the May 29 deadline;
- the Borough’s June 11, 1998 letter responding to the comments from the twenty-six individuals who filed comments by the May 29 deadline;
- DCRA’s October 2, 1998 preliminary report on the annexation proposal;
- written comments on DCRA’s preliminary report from nine individuals and organizations;
- the letter from the Commissioner of the Alaska Department of Education consulting with DCRA in accordance with 19 AAC 10.190(d);

- the November 2, 1998 letter from the Commission Chairman asking DCRA to address certain points in its final report and to provide certain information;
- DCRA's November 20, 1998 final report on the Borough's annexation proposal;
- DCRA's November 27 letter and attachments providing supplemental information in response to the Commission Chairman's request of November 2, 1998;
- the public comments and testimony received at the December 12, 1998 hearing;
- the Borough's March 12, 1999 letter indicating that the petition would not be amended; and
- comments at the decisional session that was reconvened and concluded on March 31, 1999.

Based on the record, the Commission makes the findings and conclusions set out below.

Would the Borough's proposed new boundaries allow the communication and exchange necessary for development of integrated borough government as required by 19 AAC 10.160(b)?

19 AAC 10.160(b) provides that, "The communications media and the land, water, and air transportation facilities throughout the proposed borough or unified municipality boundaries must allow for the level of communications and exchange necessary to develop an integrated borough." The term "the proposed borough" used here and elsewhere refers, of course, to the area proposed for annexation *plus the area within the Borough's current boundaries*.

The territory proposed for annexation is a sparsely-populated rural area. As is typical of such areas in Alaska, transportation and communication facilities in the territory are limited. Virtually all organized boroughs include areas of similar character. It is noteworthy that in 1974, the Alaska Supreme Court concluded that the North Slope Borough satisfied similar standards concerning communication and exchange. At the time, the North Slope Borough encompassed 97,121 square miles and was inhabited by 3,384 residents.

One of the ways to access the northwestern portion of the territory proposed for annexation is to travel through Meyers Chuck. Similarly, Hyder serves as a point of access to the northeastern portion of the territory proposed for annexation.

Further, Hyder and Meyers Chuck appear to be integrated into the transportation and communication system centered in Ketchikan. For example, DCRA reported that there were 249 commercial passenger enplanements in Meyers Chuck during 1996 (equivalent to eight enplanements per resident, which is higher than that found in many communities in Southeast Alaska). According to DCRA, an official from the Alaska Department of Transportation stated that it was reasonable to assume that virtually all of the 249 passengers were destined for Ketchikan. Regarding communications, DCRA reported that approximately 40% of the occupied homes in Meyers Chuck subscribe to the *Ketchikan Daily News*.

Transportation and communication ties between Ketchikan and Hyder are more attenuated, but do exist. For example, it was reported that residents of Hyder rely on Ketchikan-based Pond Reef EMS for emergency medical transport. It was also reported that a proposal had been advanced for a municipally owned and operated day-ferry be developed for service between Saxman and Hyder. The proposed ferry between Ketchikan (Saxman) and Hyder was included among the Borough's legislative priorities. It is also among the Borough's recommendations for funding under the Statewide Transportation Improvement Program.

Hyder (located approximately 75 air miles from Ketchikan) and Meyers Chuck (located approximately 40 air miles from Ketchikan) may be considered by some to be distant from Ketchikan. However, communities in many other organized boroughs in Alaska are separated by far greater distances. For example, Kaktovik and Point Hope are each more than 300 miles from the seat of the borough government in which they are both located.

Conclusion: The Commission concludes from the foregoing that the communication and exchange standard set out in 19 AAC 10.160(b) is satisfied, albeit minimally. The exclusion of Hyder and Meyers Chuck from the annexation proposal significantly diminishes the extent to which this standard is met.

Is the population in the proposed post-annexation boundaries of the Ketchikan Gateway Borough large and stable enough to support the proposed expanded borough government as required by 19 AAC 10.170?

19 AAC 10.170 provides that annexation may occur only if the population within the proposed new boundaries of the Borough is “sufficiently large and stable to support the resulting borough.”

The 1997 population of the Borough was 14,599. Five of the sixteen organized boroughs in Alaska had larger populations while ten had smaller ones. The 1997 population of the Borough was eighty-three percent greater than the median figure for all organized boroughs in Alaska.

The Borough’s population has shown reasonably steady growth. In 1970, the population of the Borough was 10,041. From 1970 to 1980, the population increased 12.7 percent to 11,316. The 1990 population stood at 13,828, an increase of 22.2 percent since 1980. From 1990 to 1997, the population rose to 14,599, an increase of 5.6 percent.

At the time of the 1990 Census, twenty-one individuals were counted as residents of the territory proposed for annexation (Outer Ketchikan Census Subarea, excluding Meyers Chuck and Hyder). Thus, the Borough’s estimate of twenty-five residents in the area proposed for annexation seems reasonable. Based on that figure, the population density of the territory proposed for annexation is 0.005 persons per square mile. Again, substantial portions of virtually all organized boroughs have similar characteristics. The population density of the proposed expanded borough is two persons per square mile.

Conclusion: The Commission concludes that the combined population of the Borough and the area proposed for annexation is large and stable enough to support borough government in those areas. Thus, the standard set out in 19 AAC 10.170 is satisfied.

Would the proposed expanded Ketchikan Gateway Borough have sufficient human and financial resources to operate a borough government efficiently and cost-effectively as required by 19 AAC 10.180?

For annexation to be approved, 19 AAC 10.180 provides that the Commission must determine that the economy of the proposed expanded borough includes the human and financial resources needed to provide borough services.

The Commission previously addressed aspects of the human resources issue, concluding that the size and stability of the population within the proposed expanded borough was sufficient to support borough government.

With respect to financial resources, the 1997 full and true value of taxable property in the Borough was \$1,138,128,200. That was equivalent to \$77,959 per resident. The Borough’s per capita figure was higher than that of twelve of the other fifteen organized boroughs in Alaska. The per capita value for the Borough was twenty-three percent greater than the median figure for all organized boroughs in Alaska.

According to the most recent data published by the Alaska Department of Labor, \$253,880,759 was paid to workers in the Borough for services performed during 1996. That figure does not include income from workers who are excluded from unemployment insurance coverage (e.g., self-employed individuals, fishers, unpaid family help, domestics, and most individuals engaged in

agriculture.) Earnings in the Borough in 1996 amounted to \$17,270 per capita. The comparable statewide figure was \$13,815. The Borough figure was nineteen percent greater than the median figure for all 16 organized boroughs.

The Borough's FY 1998 budget projected total revenues of \$15,010,131. Expenditures for the same period were projected to be \$13,977,251.

The Borough estimated that annexation would increase its annual revenues by a range of \$256,796 to \$1,052,681. The substantial variation (\$795,885) was attributed to fluctuations and uncertainty relating to the National Forest Receipts program. The Borough projected that expenditures resulting from the extension of services into the area proposed for annexation would amount to \$62,000 annually. Using the Borough's figures, revenues resulting from annexation would exceed expenditures resulting from annexation by a range of \$194,796 to \$990,681 annually.

DCRA indicated that the Borough's projections of nearly \$62,000 in annual expenditures to extend its boundaries appeared reasonable. However, DCRA projected that Borough revenues would increase by nearly \$348,000 as a result of the annexation. Thus, DCRA projected that annexation revenues would exceed annexation expenditures by roughly \$286,000 annually.

Conclusion: The size and stability of the Borough's population, tax base, its budget, and the income of Borough residents demonstrate that the proposed new boundaries of the Borough encompass an economy with sufficient human and financial resources to provide essential borough services on an efficient, cost-effective level.

Would the new boundaries proposed by the Borough conform generally to natural geography and include all areas necessary for full development of municipal services on an efficient, cost-effective level as required by 19 AAC 10.190(a)?

19 AAC 10.190(a) requires that proposed post-annexation boundaries of a borough conform generally to natural geography. Additionally, it requires that the boundaries include all land and water necessary to provide full development of essential borough services on an efficient, cost-effective level.

The expanded northern boundaries sought by the Borough followed the centerline of Ernest Sound to Eaton Point where the boundaries then followed the Wrangell Ranger District boundary to the U.S./Canada border. The Wrangell Ranger District boundary follows the divide between the drainage for Burroughs Bay and Behm Canal to the south and the drainage for Bradfield Canal and Ernest Sound to the north.

The eastern boundaries proposed by the Borough followed the U.S./Canada border, except for the exclusion of Hyder. The Hyder exclusion followed the thread of the Salmon River from its mouth to the U.S./Canada border. The Borough's proposed new southern boundaries conformed to the southern boundaries of the State of Alaska. The western boundaries followed various natural waterways (e.g., along the mid-point of Clarence Strait), with the exception of the exclusion of Meyers Chuck.

Land use and ownership patterns in the territory proposed for annexation appear to be consistent and compatible with the area presently within the Borough. Nearly all of the land within the Borough's existing boundaries as well as the territory proposed for annexation is part of the Tongass National Forest.

The Commission has no evidence of incompatibility with regard to ethnicity and culture in terms of the territory proposed for annexation and the area within the current boundaries of the Borough.

Consideration of existing and reasonably anticipated transportation patterns in the context of this standard raised the same concerns for the Commission that were noted previously with respect to the standard dealing with the communication and exchange necessary for development of integrated borough government. Here again, it appears that Hyder and Meyers Chuck are key links to portions of the territory proposed for annexation.

Lastly, the Commission notes that the boundaries proposed by the Borough for the exclusion of Hyder followed the thread of a river. Typically, the Commission considers the standard relating to natural geography to be best served when borough boundaries do not divide a natural drainage, as was proposed in this case.

Conclusion: The exclusion of Hyder and Meyers Chuck from the annexation proposal precludes the satisfaction of the requirement that the Borough conform generally to natural geography and include all areas necessary for full development of municipal services on an efficient, cost-effective level.

Is the territory proposed for annexation contiguous to the existing boundaries of the Borough as addressed in 19 AAC 10.190(b)?

19 AAC 10.190(b) presumes that only contiguous territory may be annexed to an organized borough unless extraordinary circumstances exist which would allow the annexation of non-contiguous territory.

The territory proposed for annexation is contiguous to the existing boundaries of the Borough.

Conclusion: The standard set out in 19 AAC 10.190(b) is satisfied.

Is the territory proposed for annexation within the Borough's model boundaries as addressed in 19 AAC 10.190(c)?

19 AAC 10.190(c) provides that, "Absent a specific and persuasive showing to the contrary, the commission, in its discretion, will not approve a proposed borough or unified municipality with boundaries extending beyond the model borough boundaries adopted by the commission and identified in the 1992 Interim Report on Model Borough Boundaries."

The territory proposed for annexation does not extend beyond the Borough's model boundaries. However, while the annexation proposal does not cross the Borough's model boundaries, neither does it conform to its model boundaries. As noted previously, the annexation proposal excludes 17.9 square miles around Hyder and 3.5 square miles around Meyers Chuck. Those 21.4 square miles are within the Borough's model boundaries.

The effect and significance of the failure of a borough proposal to conform to its model boundaries must be judged in the unique circumstances presented by each petition. There have been instances in the past where the Commission has approved petitions that do not fully extend a borough's corporate boundaries to its model boundaries. Those consist of the 1990 incorporation of the Denali Borough, the 1994 annexation to the City and Borough of Juneau, and the 1998 consolidation of the City of Haines and the Haines Borough. There has also been one instance where the Commission has approved a borough annexation proposal extending beyond the model boundaries of a borough. That was the 1997 annexation of territory to the City and Borough of Yakutat.

The Commission believes that some deference is owed to the model borough boundaries beyond that called for in a narrow interpretation of 19 AAC 10.190(c). The Borough's annexation proposal *includes* 99.6 percent of the area within its model boundaries that is not already within its corporate boundaries; however, it *excludes* 87.7 percent of the residents of that same area. If

the annexation proposal were approved as presented, Hyder would become an enclave surrounded by the Borough. Meyers Chuck would become a near-enclave, surrounded on three sides by the Borough.

On October 21, 1998, the Borough wrote that it “has contemplated from the beginning that there is a significant likelihood that the LBC would, in fact, include Hyder and Meyers Chuck in the newly expanded borough.” (emphasis added) The Borough also wrote in the same letter that, “it may be reasonable in the future for [Meyers Chuck and Hyder] to join the Borough, whether as a result of this petition or a subsequent annexation proceeding.” (emphasis added) Further, the Borough Mayor stated during the Commission’s March 31, 1999 meeting that residents of Hyder and Meyers Chuck, “felt that sooner or later they would wish to join the Borough -- but the time was not right at this time.” While the Commission could consider the prospect that boroughs might incrementally extend their corporate boundaries to reach their model boundaries, it appears in this case that the Borough’s current proposal would most likely be the terminal stage of its boundaries. Residents of Meyers Chuck and Hyder have expressed strong opposition to being included in a borough and the Borough has expressed little interest in annexing those communities. Such an arrangement would poorly serve the State’s long-term best interests.

Conclusion: Technically, the annexation proposal satisfies the standard set out in 19 AAC 10.190(c) in that it does not extend beyond the Borough’s model boundaries. However, the Borough’s model boundaries also reflect the application of all borough boundary standards and relevant constitutional principles to the pertinent facts in the Borough’s circumstances. In the record, there is insufficient justification for deviation from those model boundaries here. If the Borough’s annexation proposal were approved, the Borough would have little or no incentive to further extend its boundaries to include Hyder and Meyers Chuck.

Would the proposed Ketchikan Gateway Borough annexation uphold the enjoyment of all civil or political rights, including voting rights, regardless of race, color, creed, sex, or national origin as addressed in 19 AAC 10.910?

43 U.S.C. 1973 subjects municipal annexations in Alaska to review under the Federal Voting Rights Act. This Federal requirement is intended to ensure that changes in voting rights, practices, and procedures (including those brought about by annexation) will not result in “a denial or abridgement of the right of any citizen of the United States to vote on account of race or color” or because a citizen is a “member of a language minority group.”

Additionally, 19 AAC 10.910 provides that, “A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.”

The territory proposed for annexation is largely uninhabited. There is no evidence to suggest that the extension of the Borough’s boundaries would result in any violation of the federal Voting Rights Act or the provisions of 19 AAC 10.910.

Conclusion: The annexation proposal satisfies the provisions set out in 19 AAC 10.910.

Does an adequate plan exist for proper extension of services, rights, powers, duties, assets, and liabilities of the Ketchikan Gateway Borough to the territory proposed for annexation as required by 19 AAC 10.900?

19 AAC 10.900 requires that a petition for annexation include:

- a practical plan demonstrating the intent and capability of the annexing borough to provide essential borough services in the shortest practicable time after the effective date of annexation;

- a practical plan demonstrating the manner in which all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, service area, or other entity located in the territory proposed for change will be assumed by the annexing borough; and
- a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, service area or other entity by the annexing borough government.

The transition plan prepared by the Borough consisted of six pages. It provided a plan for the extension of services and taxes to the area proposed for annexation by July 1, 2000. It also addressed the Borough's capability to extend essential borough services to the area in question. Details about the extension of Borough laws, regulations, and policies to the area proposed for annexation were also provided in the transition plan.

Further, the plan addressed integration of the relevant portion of the existing Southeast Island REAA into the Borough. It also indicated that officials of the Southeast Island REAA were consulted regarding the prospect of annexation.

Considering that the area is so sparsely inhabited and has such little development, the extension of borough government to the area in question would not appear to present difficult challenges to the Borough.

Conclusion: The Commission concludes that the Borough's transition plan is adequate and fulfills the requirements of 19 AAC 10.900.

Are the social, cultural, and economic characteristics and activities of the people in the territory proposed for annexation interrelated and integrated with the characteristics and activities of the people in the Ketchikan Gateway Borough as required by 19 AAC 10.160(a)?

19 AAC 10.160(a) states:

(a) The social, cultural, and economic characteristics and activities of the people in the territory must be interrelated and integrated with the characteristics and activities of the people in the existing borough or unified municipality. In this regard, the commission will, in its discretion, consider relevant factors, including the

(1) compatibility of urban and rural areas within the proposed borough or unified municipality boundaries;

(2) compatibility of economic lifestyles and industrial or commercial activities within the proposed borough or unified municipality boundaries;

(3) existence of customary and simple transportation and communication patterns throughout the proposed borough or unified municipality boundaries; and

(4) extent and accommodation of spoken language differences throughout the proposed borough or unified municipality boundaries.

As noted previously, the territory proposed for annexation is inhabited by only twenty-five individuals. There appears to be compatibility between the residents of the Borough and the residents of the territory proposed for annexation even though most Borough residents live a somewhat urban lifestyle while the territory proposed for annexation is rural. The compatibility between the areas in question includes economic lifestyles, industrial and commercial activities, transportation facilities and patterns, language, and other social, cultural, and economic considerations.

Conclusion: The Commission concludes that the standard set out in 19 AAC 10.160(a) is satisfied.

Does the Borough's annexation proposal serve the constitutional provision that its boundaries embrace an area and population with common interests to the maximum degree possible as mandated by Article X, Section 3 of Alaska's constitution?

Article X, Section 3 of the Constitution of the State of Alaska reads as follows:

“The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.”

The territory proposed for annexation lies in Alaska's vast unorganized borough. The unorganized borough was established in 1961 by the State Legislature to fulfill the mandate of Article X, § 3 of Alaska's constitution that the entire state be divided into boroughs. The 1961 Legislature enacted a law providing that, “Areas of the state that are not within the boundaries of an organized borough constitute a single unorganized borough.” No organized boroughs existed at the time. Consequently, the 1961 Legislature “divided” Alaska into one unorganized borough encompassing the entire state.

While the action of the 1961 Legislature may have met with the letter of the law requiring the state to be “divided” into boroughs, it failed to closely conform to a related provision of the constitution. By creating a single borough comprised of the entire state, the 1961 Legislature neglected the mandate in Article X, § 3 that each borough embrace an area and population with common interests to the maximum degree possible.

Today, the unorganized borough contains an estimated 374,843 square miles – an area substantially larger than California, Oregon, and Washington combined. The unorganized borough encompasses 57% of Alaska. It ranges in a *non-contiguous* fashion from the southernmost tip of Alaska to an area approximately 150 miles north of the Arctic Circle. The unorganized borough also extends in a *non-contiguous* manner from the easternmost point in Alaska (at or near Hyder) to the westernmost point in Alaska at the tip of the Aleutian Islands.

The unorganized borough is comprised of a vast area with *extremely* diverse interests. This is particularly evident from the fact that the unorganized borough spans so many house election districts, census districts, regional educational attendance areas, regional Native corporations, judicial districts, and model borough boundaries – each of which are to some extent comprised of areas with common social, cultural, economic, geographic, and other characteristics.

In this case, the territory proposed for annexation has a great deal in common with the Borough. Existing State House Election District 1 conforms closely to the proposed new boundaries of the Borough. However, Election District 1, like the Borough's model boundaries, includes Hyder and Meyers Chuck. The area proposed for annexation also conforms substantially to the “Outer Ketchikan Census Subarea” of the “Prince of Wales-Outer Ketchikan Census Area.” Hyder and Meyers Chuck are included in that subarea as well.

Further, the territory proposed for annexation includes most of the Cleveland Peninsula. That area is used by the residents of Ketchikan and surrounding communities for subsistence hunting, fishing, and primitive recreation. Meyers Chuck is also located on Cleveland Peninsula.

Substantial portions of the Ketchikan Ranger District and the Misty Fiords National Monument are currently within the Borough. The proposed annexation would bring those areas wholly within the boundaries of the Borough. The Ketchikan Ranger District and the Misty Fiords National Monument are both administered by U.S. Forest Service staff based in Ketchikan.

Links between Ketchikan and the area proposed for annexation have existed for many years. In 1963, the Legislature determined that the territory proposed for annexation, plus Hyder and Meyers Chuck, was suitable for inclusion within the Borough under the terms of the Mandatory Borough Act. However, smaller boundaries were implemented under a local initiative that preempted the boundaries set by the Mandatory Borough Act.

Lastly, links between the Borough and the area proposed for annexation are evident in that the territory proposed for annexation is wholly within the model boundaries of the Borough. Those boundaries were set by the Commission in 1991 using the legal borough boundary standards and constitutional principles established in law.

There are strong ties between the Borough and both Hyder and Meyers Chuck. Common ties concerning transportation and communication were addressed previously. Beyond that, the Borough identified four factors that it considered to be of “particular importance” in demonstrating the close ties between it and the territory proposed for annexation. Those factors related to: (1) election districts, (2) recording districts, (3) borough government boundaries as mandated by the 1963 legislature, and (4) model borough boundaries. However, each and every one of those four factors also links the Borough to Meyers Chuck and Hyder. Other common interests linking the Borough to Hyder and Meyers Chuck include natural geography and census sub-area boundaries. Medical care is another area in which there are common interests since both Hyder and Meyers Chuck are within the “Primary Service Area” of the Ketchikan General Hospital.

Conclusion: Given the extreme diversity of the unorganized borough, coupled with the social, cultural, economic, geographic, transportation, and other ties between the Borough and the area proposed for annexation, the territory unquestionably has stronger ties to the Borough than it does to the rest of the unorganized borough. Even if a comparison is made between a select adjacent portion of the unorganized borough (e.g., Prince of Wales Island) versus the Borough, the territory still exhibits stronger ties to the Borough.

While annexation would better satisfy the constitutional mandate for the Borough’s boundaries to encompass maximum common interests than is the case currently, the constitution calls for boundaries to embrace an area of common interests “to the maximum degree” possible. Without Meyers Chuck and Hyder, this standard cannot be met.

Does the Borough annexation proposal serve the balanced best interests of the State of Alaska, the territory proposed for annexation, and affected political subdivisions as required by 19 AAC 10.200?

The Commission views this standard to relate principally to Article X, Sections 1 and 3 of Alaska’s constitution. Section 1 promotes maximum local self-government with minimum numbers of local governments. It also encourages the extension of organized borough government to unorganized areas. Section 3 requires that each borough embrace an area and population with common interests to the maximum degree possible.

DCRA emphasized the adverse financial impacts that annexation would have on communities within that portion of the Tongass National Forest lying outside organized boroughs. Those adverse impacts would occur with regard to the National Forest Receipts program and Payment in Lieu of Taxes program.

DCRA also criticized the proposal because it sought “to gain substantial revenue without assuming a commensurate level of responsibility.” DCRA projected that the Borough would gain nearly \$350,000 as a result of annexation, but would spend only about \$60,000 annually.

The Commission rejects the notion that State policy positions concerning borough incorporation and annexation should be driven by the financial considerations such as those expressed by DCRA in this proceeding. National Forest Receipt and Payments in Lieu of Taxes programs are ephemeral – in a few years those programs may operate in a significantly different manner or may no longer exist. In contrast, the formation of a borough or the extension of a borough over a large area is a much more permanent action.

Further, it is poor public policy to suggest that each annexation or incorporation proposal should be weighed to ensure that revenues and costs are somehow balanced. Many areas within existing organized boroughs do not receive services commensurate with revenues generated by those areas. Conversely, many areas of organized boroughs receive services well beyond the level of revenues generated by those areas.

The Commission is guided by Alaska's constitution and standards established in law. These make little or no provision for consideration of the fiscal effects on which DCRA placed so much emphasis.

If there are adverse fiscal consequences, parties should seek legislative remedies. The State and Federal legislatures have passed a variety of laws that affect the distribution of revenues to and among local governments. In this particular instance, it appears from the record that the State legislature was mindful of the possible consequences that would result from this type of annexation proposal when it extended National Forest Receipts funding to entities in the unorganized borough. During the deliberations on the matter, some legislators expressed a hope that the legislation would not inhibit borough government.

Even if financial impacts were a relevant consideration, the adverse financial impacts on numerous local service providers in this particular instance would have been de minimus in terms of the percentage of the operating budgets of each of the affected entities. As such, the Department's concern as to the financial impact on others was overstated.

Considering the best interests of the State of Alaska, the territory proposed for annexation, and affected political subdivisions, the Commission notes that the territory manifests a need for services that can be met most efficiently and effectively by the Borough. This is particularly the case with respect to planning. While there is no substantial mining activity ongoing in the territory, there is a reasonable likelihood that significant mineral development will occur. Substantial weight should be given to the need for planning in an area that has potential for significant mining activity. It is best to institute the local governmental mechanism to provide for planning before substantial development occurs.

However, the need for municipal government is not limited to the area proposed for annexation. That area includes Meyers Chuck and Hyder as well. When planning is conducted around those communities, special focus should be given to how activities in the adjacent region will affect those communities. As such, the Borough's annexation proposal significantly undercuts its own ability to effectively address planning needs by excluding Meyers Chuck and Hyder.

There are no schools in the territory proposed for annexation. However, here again, the Borough undermines its own annexation proposal by excluding Meyers Chuck and Hyder. The State would be left with the responsibility for the education of students in those communities. The State currently contracts directly with the school district in Stewart, British Columbia for the education of Hyder students. Any students in Meyers Chuck would be served by the State's educational service area encompassing Meyers Chuck (Southeast Island REAA).

It is also appropriate to again observe that the Borough's annexation proposal would establish Hyder as an enclave within the Borough. Additionally, Meyers Chuck would be surrounded by the Borough on three sides. Enclaves typically lead to diminished efficiency and effectiveness in the delivery of municipal services.

Conclusion: The petition, as presently structured, marginally serves the balanced best interests of the State of Alaska, the territory proposed for annexation, and affected political subdivisions. The greatest need for borough services in this area is planning and education. The Borough's proposal leaves out areas that are essential to those planning and educational needs, notably Meyers Chuck and Hyder. The annexation proposed by the Borough create enclaves. The Commission has a formal policy to avoid enclaves within boroughs as reflected in 19 AAC 10.200(2). If Hyder and Meyers Chuck were included, the standard would be served to a far greater degree.

Does the proposed Ketchikan Gateway Borough annexation promote maximum local self-government as provided by Article X, Section 1 of the State constitution?

Article X, Section 1 of the Constitution of the State of Alaska reads as follows: "The purpose of this article is to provide for *maximum local self-government* with a minimum of local government units. . ." (emphasis added)

In one respect, the annexation proposal would advance local self-government by including an area of potential significant development within the Borough's boundaries. Such would position the Borough to exert significant local self-government powers over that area.

Here again, the Borough's proposal is deficient in that it omits Hyder and Meyers Chuck. As was noted earlier, the annexation proposal seeks to add 99.6 percent of the area within the Borough's model boundaries not already within its corporate boundaries, but excludes 87.7 percent of the residents of that same area. That deficiency overshadows the benefit noted in the preceding paragraph.

Conclusion: Because the annexation petition excludes Hyder and Meyers Chuck, the Commission considers the proposal to fail in terms of promoting maximum local self-government.

Would the Borough's annexation proposal promote a minimum of local government units as favored by Article X, Section 1 of the State constitution?

Article X, Section 1 of the Constitution of the State of Alaska states: "The purpose of this article is to provide for maximum local self-government *with a minimum of local government units . . .*" (emphasis added)

The Commission is divided on this issue. Commissioners Wasserman, Cannington, and Walters interpret this provision of the constitution to encourage the Commission to consider whether the annexation proposal may lead to the proliferation of local governments because it was not sufficiently expansive. In this regard, the three Commissioners noted that Hyder, which is within the Borough's model boundaries, clearly has governmental needs. Commissioners Wasserman, Cannington, and Walters expressed the view that the proposed exclusion of Hyder from the Borough virtually guarantees that the only way those service needs are going to be met in the future, other than by the State of Alaska, is through a city government. On the other hand, those Commissioners note that if Hyder were annexed into the Borough, it could obviate the need to form a city because its governmental needs can be met by the Borough.

In contrast to the other three Commissioners, Commissioners Waring and Tesche view the constitutional provision in question as simply favoring changes that that would not increase or might even decrease the number of local governments. In this particular case, they noted that the proposal neither increases nor decreases the number of local governments. Commissioners Waring and Tesche believe that such cannot be used as a basis to conclude that the standard is not met. Rather, they viewed the standard as being irrelevant in this particular instance. Commissioners Waring and Tesche contend that it is inadvisable to suggest that every borough

annexation proposal would have to be sufficiently expansive within its model boundaries (or some other reasonable boundaries) to preclude the opportunity for city formation.

Conclusion: Through Commissioners Wasserman, Cannington, and Walters, the Commission determines that the Borough’s annexation proposal failed to meet this standard because the exclusion of Hyder from the Borough would likely encourage that community to form a city government, which might not be necessary if it were included within the Borough. Commissioners Waring and Tesche, however, consider this standard irrelevant because the Borough’s proposal neither increases nor decreases the number of local government units.

Must a proposal be approved by the Commission whenever the standards have been minimally met?

During the proceedings, the Borough expressed the position that “the Alaska Constitution, as interpreted by the Alaska Supreme Court, *requires* that the Local Boundary Commission lean in favor of granting the annexation petition if the factors to be considered are minimally satisfied.” (emphasis added)

In the case referred to by the Borough, the Alaska Supreme Court stated, “We read [Article X, § 1] to favor upholding organization of boroughs by the Local Boundary Commission whenever the requirements for incorporation have been minimally met.” Mobil Oil Corp. v. Local Boundary Commission, 518 P.2d 92, 99 (Alaska 1974)

The Commission views this as a statement by the Court that it will uphold the discretion of the Commission to make decisions, even when there is minimal supporting evidence in the record. The Court did not say, as the Borough implies, that the Commission is *required* to approve petitions that only marginally satisfy the applicable standards.

Does a borough government face a higher burden of proof because it waited for an extended period of time before seeking annexation?

DCRA reported that some individuals took the position during the proceedings that the Borough effectively forfeited the opportunity to annex the area or that it should at least face a ‘greater burden of proof’ with respect to its annexation proposal because it waited nearly thirty-five years to propose the annexation. The Commission categorically rejects such views.

There is no legitimate basis to suggest that the Borough forfeited its opportunity to include the territory proposed for annexation when it incorporated a smaller area thirty-five years ago. Neither is there a foundation to suggest that the passage of time (thirty-five years in this case) should be a factor in determining the merits of a borough annexation proposal. Alaska’s constitution clearly provides for flexibility with respect to borough boundaries, without respect to time.

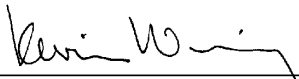
Unlike many other states, once regional government boundaries in Alaska are set, they are not forever fixed. Most boroughs in Alaska have undergone one or more boundary changes. One did so more than thirty years after its initial boundaries were set.

SECTION IV ORDER OF THE COMMISSION

Based on the findings and conclusions set out in Section III, the Commission hereby determines that the February 28, 1998 petition of the Ketchikan Gateway Borough for annexation of 5,524 square miles fails to comply with all requisite annexation standards established in law. Further, the proposal fails to serve all relevant principles established in the Constitution of the State of Alaska. Accordingly, the petition is hereby denied.

Approved in writing this 16th day of April, 1999.

LOCAL BOUNDARY COMMISSION

BY: 
Kevin Waring, Chairperson

Attest:


Dan Bockhorst, Staff

RECONSIDERATION BY THE COMMISSION

Within 20 days after this decision becomes final under 19 AAC 10.570(g), a person may file a request for reconsideration of the decision. The request must describe in detail the facts and analyses that support the request for reconsideration.

If the Commission has taken no action on a request for reconsideration within 30 days after the decision became final under 19 AAC 10.570(g), the request is automatically denied.

If the Commission grants a request for reconsideration, the petitioner or any respondents opposing the reconsideration will be allotted 10 days from the date the request for reconsideration is granted to file a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration.

JUDICIAL APPEAL

A judicial appeal of this decision may also be made under the provisions of the Alaska Rules of Appellate Procedures, Rule 601 et seq. An appeal to the Superior Court must be made within thirty days after the last day on which reconsideration can be ordered.
